

**`Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
Sandwich Isles Communications, Inc.)	
Petition for Waiver of the Commission’s Rules)	
Implementing Reform of Universal Service)	
Support and Intercarrier Compensation for)	
Rate-of-Return Carriers)	

**REPLY COMMENTS OF
MESCALERO APACHE TELECOM, INC.**

INTRODUCTION

Mescalero Apache Telecom, Inc. (MATI) hereby submits its Reply Comments to the Federal Communications Commission (Commission) in response to the Commission's request for comments on the Petition for Waiver of 47 CFR 54.302 (Petition) filed by Sandwich Isles Communications, Inc. (SIC).¹

MATI is a tribally-owned carrier that provides vital communications services to the Mescalero Apache Tribe in New Mexico. As a tribally-owned carrier serving exclusively Tribal areas, MATI is well-positioned to provide the Commission with constructive comment on the merits of SIC's waiver, whose service area exhibits similar challenges as those attributable to MATI's service area.

SUMMARY

MATI supports SIC's Petition for Waiver of 47 CFR 54.302, which establishes a limit on the total per-line high cost support of \$250 per month, or \$3,000 annually. The real issue, regardless of the comments urging the Commission deny SIC's Petition², is the existence of legislative and other governmental goals and objectives that should take precedence over any perceived need to eliminate waste in or abuse of the universal service support mechanisms.

I. SIC's Mission to Provide Communications Services to Tribal Areas Should Be the Key Consideration

It is well known that SIC, and other similarly situated carriers, exist in order to fulfill certain mandates, goals, and objectives set forth by local, state, and federal governments.³ These mandates, goals, and objectives are extremely important to the areas served, and to the Native American people living on those areas, and provide for, among other things, the economic

¹ Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed December 30, 2011)

² See Comments of United States Telecom Association (filed February 9, 2012)

³ See e.g., Petition at iii - vi

wellbeing and independence of Tribal areas.⁴ Communications services are a key part of this intergovernmental mandate, and allow for services that are an important aid in ensuring these Tribal areas become and remain part of the global economy. This has historically been accomplished through Tribal, state, and federal universal service policy. To date, universal service policies have worked in concert with the larger and more important overall policy related to Tribal areas – until now. The Commission’s decisions in the *ICC/USF Order*, including the decision that is the subject of SIC’s Petition, threaten the decades of progress that has been made.

SIC’s petition lays out well the myriad reasons the cap on per-line support threatens the provisions of communications services to Hawaiian Homelands (HHL). The Petition also presents the facts surrounding the importance of SIC’s voice and broadband services for the economic well-being and independence of the residences and businesses located on the HHL. For example, “Sandwich Isles’ continued operation and completion of its build out are critical to the ability of the State of Hawaii to meet the trust responsibilities established by Congress in 1921. Without the waiver, requested in this Petition, the beneficiaries of the trust will be without the communications services necessary to make development, resettlement, and rehabilitation of the trust lands possible.”⁵ This means that the Commission’s actions, and in this case specifically the decision to limit total per-line support, are in direct conflict with policy established in 1921.

MATI, due to decisions and proposals made in the *ICC/USF Order* and accompanying Further Notice of Proposed Rulemaking (FNPRM), faces the real possibility of losing a substantial amount of universal service support.⁶ Only a brief ten years ago, this support was considered necessary and sufficient for a newly-formed carrier to bring communications services to a Tribal area that had been neglected for years, much as the support SIC is receiving today has been determined to be necessary for providing and advancing service to the HHL. To now determine that the support being used to provide service to Native Americans is inefficient is a direct threat

⁴ The Commission explicitly included Hawaiian Homelands in the definition of Tribal areas – see *ICC/USF Order* at footnote 197

⁵ Petition at 2

⁶ See MATI’s Comments (January 18, 2012) and Reply Comments (February 17, 2012) to the FNPRM

to policies existing in the United States to ensure Tribal areas are given every possible tool to flourish.

II. The Petition Presents Sufficient Evidence for the Commission's Swift Approval

As MATI argues above, the key determining factor for the Commission's consideration of SIC's petition is the overall view of previous mandates, goals, and commitments related to Native American areas and as these previously-determined policies can coincide with universal service policy. MATI recognizes the Commission's desire to ensure the universal service mechanisms do not present a burden on Americans, and to that end the goal of ensuring the funds tasked with assisting in universal service policy are used as efficiently as possible. While parties are arguing the reasonableness of the Commission's newly adopted standards for waiver⁷, due to the potentially catastrophic circumstances related to SIC's ability to continue providing service once the per-line cap on high cost support is implemented, SIC had to file the Petition in compliance with the Commission's onerous rules.⁸

The Commission should give due weight to SIC's compliance with the Petition for Waiver requirements as spelled out in the *ICC/USF Order*. SIC presented responses to all requirements contained in the *ICC/USF Order*⁹ and demonstrated that the application of 47 CFR 54.302 would be "a severe threat to the continued availability of wireline voice service as well as broadband service for residents and businesses located on HHL"¹⁰ and a result would be "that residents of the Hawaiian Homelands will no longer be assured of continuation of voice and broadband service."¹¹ These statements clearly show compliance with directives made in the *ICC/USF Order* that waivers would be granted "where an ETC can demonstrate that, without additional universal service funding, its support would not be 'sufficient to achieve the purposes of [section

⁷ See Petition for Reconsideration and Clarification filed by the National Exchange Carrier Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance (filed December 29, 2011) at 19

⁸ *ICC/USF Order* at 539-544

⁹ See Petition at 2, referencing the *ICC/USF Order* at 539 and 542

¹⁰ Petition at 2

¹¹ *Id.* at 3

254 of the Act”¹² and “in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services...”¹³ The mere fact of the loss of over 75% of its high cost support¹⁴ over the phase down period plainly shows that SIC’s ability to provide service is severely impacted.

CONCLUSION

MATI supports SIC’s Petition for Waiver of Section 54.302 of the Commission’s rules. The *ICC/USF Order* has exacerbated the already difficult task companies such as MATI and SIC has undertaken to bring modern communications services to historically underserved Tribal areas. The provision of universal voice and broadband services to Tribal areas transcends mere universal service policy, a fact that the Commission must consider when investigating SIC’s Petition. Previous national, state, and Tribal policies, goals, and objectives must be acknowledged, and must take precedence when an agency acts to threaten these hard won gains for Native American people. Therefore, the Commission must act in all haste to grant the Petition so that SIC can continue provision of vital services to the Hawaiian Homelands.

Respectfully Submitted,

Godfrey Enjady
Mescalero Apache Telecom, Inc.

February 24, 2012

¹² *ICC/USF Order* at 540

¹³ *Id.*

¹⁴ See Comments of The United States Telecom Association at 4 – SIC is receiving \$12,371 per line per year in support. Limiting this to \$3,000 per line per year represents an approximate 75% reduction